IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13433 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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JAMNAGAR MUNICIPAL CORPORATION - Petitioner
Versus
HINDUSTAN LEVER LIMITED - Respondent

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Appearance :
MR JR NANAVATI for Petitioner.
MS MEGHA JANI for Respondent.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 27/12/2006
ORAL JUDGMENT

1. The petitioner – original defendant, namely, Jamnagar Municipal Corporation has filed this petition under Article 226 of the Constitution of India praying for the direction to the learned Civil Judge (Senior Division), Jamnagar to hear the application filed by the petitioner at Exh. 27 for leave to file written statement before the application Exh. 11 for interim injunction is heard and decided. The applicant has also made the prayer by way of amendment which was granted on 05.07.2005 by this Court whereby the petitioner has prayed for staying further proceedings of Special Civil Suit No. 129 of 2001 pending in the Court of Joint Civil Judge (S.D.), Jamnagar.

2. This Court has issued rule on 10.10.2005 and ad-interim relief granted earlier on 05.07.2005 was ordered to continue till further order.

3. Heard Mr. J.R. Nanavaty, learned advocate appearing for the petitioner and Ms. Megha Jani, learned advocate appearing for the respondent.

4. It is the case of the petitioner that the respondent – Hindustan Lever Limited filed suit against the petitioner for possession of land admeasuring about 11 Hectares 35 Acres 77 Sq. Mtrs. as described in para 8 of the plaint as the suit land and also for mesne profit @ Rs.1,000/- per Sq. Ft. from the date of taking possession till the date of handing over the possession of the suit land or in the alternative, for a decree directing the defendant – present petitioner to fulfill its statutory and/or contractual obligation of initiation of acquisition proceedings for determination of the compensation of the suit land according to law and pay the same to the respondent – plaintiff.

5. The respondent has thereafter filed an application for injunction on 12.08.2002 vide Exh. 11. The injunction application filed by the respondent was

rejected by the Trial Court on 15.07.2003. The respondent thereafter filed Appeal From Order No. 44 of 2004 before this Court. The petitioner filed an application Exh. 27 on 06.11.2004 seeking leave to file written statement. This Court has remanded the matter to the Trial Court to reconsider the injunction application by an order dated 14.12.2004. After remand, the petitioner submitted an application at Exh. 37 to the Trial Court requesting the Trial Court to hear the application filed by the petitioner at Exh. 27 prior to the hearing of injunction application or along with it. The Trial Court rejected the application at Exh. 37 by an order dated 21.06.2005 which is under challenge in the present petition.

6. After having heard the learned advocates appearing for the respective parties and after having gone through the memo of petition and the relevant documents produced before the Court, the Court is of the view that the petitioner has filed an application at Exh. 27 on 06.11.2004. The said application was not heard by the Trial Court. In the

meantime, this Court has passed an order on 14.12.2004 remanding the matter to the Trial Court to rehear and reconsider the injunction application. Before the said application is heard, the petitioner has filed one more application Exh.37 before the Trial Court to hear its application Exh.27 to take written statement on record. Even chronologically the sequence of events, if considered, the application Exh. 27 is required to be heard first and even otherwise, to appreciate the real controversy between the parties, the application to take the written statement on record is required to be heard first. In this view of the matter, the Court is of the view that the Trial Court is not justified in rejecting the application Exh. 37. The Court, therefore, directs the Trial Court to hear the application Exh. 27 filed by the petitioner to take the written statement on record and thereafter, the injunction application may be heard. Since the suit is of 1988, the Trial Court is directed to hear the application Exh. 27 within two months from the date of receipt of writ or from the date of receipt of this order, whichever is earlier.

Parties to the suit are directed to co-operate the Trial Court in disposal of the application within time fixed by the Court.

7. In the above view of the matter, the petition is allowed to the extent that the Trial Court may hear the application of the petitioner to take the written statement on record. Rule is made absolute to the above extent without any order as to costs.

[K.A. PUJ, J.]

Savariya